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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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CC Docket No. 92-115

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Revision of Part 22 of the
Commission's Rules Governing
the Public Mobile Services

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To: The Commission

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

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SUMMARY

Vanguard believes that the proposed revisions to Part 22 of the rules will simplify the FCC's licensing procedures and relieve carriers and the Commission's staff of the burdens associated with unnecessary government regulation. The proposals set forth in the Further Notice represent an important and timely initiative that will eliminate unnecessary filings and bring regulatory requirements in line with marketplace conditions.

Vanguard supports the specific proposals set forth in the Further Notice with certain suggestions described herein. First, shifting responsibility for determining unserved areas from the Commission's staff to a cellular licensee proposing a Service Area Boundary (SAB) extension is an appropriate regulatory step provided the licensee may reasonably rely on publicly available information for determining unserved areas. Second, changing the scale of the maps that cellular systems must file to 1:500,000 will reduce filing burdens on applicants and relieve the Commission's staff from unnecessary review functions. Third, elimination of licensing for interior cell sites will improve the current licensing system and afford meaningful benefits for cellular licensees and the FCC staff alike. Finally, given the other rule revisions suggested in the Further Notice, modifying the information that licensees must submit pursuant to Section 22.925 reflects a reasonable regulatory proposal.

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To: The Commission

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in connection with the Commission's Further Notice of Proposed Rulemaking in the above-referenced proceeding.^{1/} Vanguard supports the proposed revisions to Part 22 of the rules and applauds the Commission's efforts to eliminate outdated rules and unnecessary information collection requirements, streamline the FCC's licensing procedures, and afford licenses in the public mobile services greater flexibility to serve their customers.

I. PRELIMINARY STATEMENT

Vanguard began its involvement in cellular communications in 1984 and today ranks as one of the top-20 largest cellular carriers in the United States. As an established, non-wireline licensee, Vanguard operates 22 cellular systems in the eastern half of the country serving more than 175,000 subscribers. The Vanguard

^{1/}

Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Further Notice of Proposed Rulemaking, CC Docket No. 92-115, rel. May 20, 1994 (the "Further Notice".)

systems incorporate approximately 145 fully-constructed cell sites supported by extensive microwave networks. Over the years Vanguard has experienced considerable expansion and the Company continues to grow at an annual rate in excess of 35 percent.

Vanguard believes that the proposed revisions to Part 22 of the rules will simplify the FCC's licensing procedures and relieve carriers and the Commission's staff of the burdens associated with unnecessary government regulation. Indeed, the proposals set forth in the Further Notice reflect an important and timely initiative that will eliminate unnecessary filings and bring regulatory requirements in line with marketplace conditions. As the cellular industry matures and experiences increasing competitive pressures, cellular carriers must operate in a regulatory environment which is efficient and which balances the Commission's legitimate need for information and the industry's desire for streamlined regulations and reduced paperwork. For this reason, Vanguard supports the proposed revisions to Part 22 of the rules as they affect the regulation of cellular service.

Each of the specific proposals set forth in the Further Notice will serve the public interest. First, shifting responsibility for determining unserved areas from the Commission's staff to a cellular licensee proposing a Service Area Boundary (SAB) extension is an appropriate regulatory step provided the licensee may reasonably rely on publicly available information for determining unserved areas. Second, changing the scale of the maps that cellular systems must file to 1:500,000 will reduce filing burdens on applicants and relieve the Commission's staff from

unnecessary review functions. Third, elimination of licensing for interior cell sites will improve the current licensing system and afford meaningful benefits for cellular licensees and the FCC staff alike. Finally, given the other rule revisions suggested in the Further Notice, modifying the information that licensees must submit pursuant to Section 22.925 reflects a reasonable regulatory proposal.

Vanguard's comments and suggestions regarding each of these proposals will be discussed below.

II. PROPOSALS AFFECTING CELLULAR SERVICE

A. Service Area Boundary Extensions

The Further Notice observes that a cellular licensee may expand its composite Service Area Boundary (SAB) into an adjacent cellular service territory pursuant to a written agreement with the latter licensee. Under Section 22.903(d) of the rules, a licensee is permitted to expand its SAB into an adjacent CGSA at any time, and may extend into an adjacent MSA or RSA provided the 5 year fill-in period has not expired. The Further Notice points out that many of the FCC Form 489 filings that notify the Commission of SAB extensions simply acknowledge a licensee's permission to allow an SAB extension into its market, but do not address whether the SAB extension covers any unserved area. To rectify this problem, the Commission is proposing to require licensees notifying the Commission of minor modifications to their systems on FCC Form 489, which include SAB extensions into an adjacent market, to specify whether the 5 year fill-in period for that market has expired, and if so, to state that the SAB extension does not cover any unserved area.

Vanguard supports the proposal set forth in the Further Notice as a reasonable requirement to minimize the amount of time the Commission's staff must devote in ascertaining whether an SAB extension covers any unserved area. However, cellular licensees do not normally possess independent knowledge concerning the precise coverage details of adjacent market systems. In order to comply with the Commission's proposed rule, a licensee would need to investigate whether the 5 year fill-in period in the adjacent market has expired, and if so, whether a given SAB extension covers any unserved area in that adjacent market. For this reason, the Commission should specifically state, for purposes of determining whether an SAB extension would cover any unserved area, that cellular licensees may reasonably rely on representations of adjacent market licensees and on System Information Update (SIU) maps currently on file at the FCC.

It is reasonable for the Commission to propose shifting the task of determining unserved areas in this context from the FCC's staff to the licensee proposing an SAB extension, especially if adopting this proposal would alleviate a substantial drain on Commission resources. However, it would not be appropriate to require a cellular licensee to make representations to the Commission about coverage in adjacent markets without the ability to rely on some objective factual basis for making such representations. Thus, while Vanguard supports the proposed rule revision, it urges the Commission to hold that licensees are entitled to rely on the representations of adjacent licensees and on currently-available SIU maps as the basis for specifying that an SAB extension does not cover any unserved area.

B. Map Scale

The Commission proposes to revise the scale of maps required to be filed under the cellular rules from 1:250,000 to 1:500,000. Vanguard supports this change for the reasons discussed in the Further Notice. Maps on a scale of 1:500,000 are readily available from the U.S. Geological Survey and the proposed rule change will therefore not impose any additional filing burdens on cellular applicants. Moreover, reduction in the map size will make the maps more manageable and facilitate easier filing and storage by the Commission and licensees. Also, the Commission notes that while the reduction of the map scale from 1:250,000 to 1:500,000 will result in the filing of a less detailed map, the proposed map size is sufficient for the principal purposes for which such maps are currently used, viz., to determine whether CGSA contours extend beyond market boundaries and whether there exist any unserved areas. For these reasons, Vanguard believes that revising the scale of cellular system maps from 1:250,000 to 1:500,000 reflects a reasonable regulatory proposal that would serve the public interest.

C. Elimination of Licensing for Inner Cell Sites

In the earlier Notice in this docket, the Commission proposed to modify the rules to permit cellular licensees to make minor changes to their facilities and to add transmitters within the contours of authorized stations without seeking prior

approval or notifying the Commission of such changes.^{2/} Vanguard strongly endorses this proposal as a means of eliminating unnecessary regulation, reducing the number of FCC filings cellular carriers must submit, and streamlining the FCC's overall application process. If the Commission adopts this proposal, the Further Notice recommends eliminating the listing of internal cell sites on authorizations for existing licensees. Since the Commission intends to maintain current information regarding cell sites that constitute a system's CGSA boundary, i.e., the external cell sites, it proposes to require cellular licensees to submit a one-time filing of certain information for each of their external cells. Under the new procedures, the staff would no longer maintain records and issue authorizations for internal sites.

Vanguard supports the elimination of licensing for interior cell sites and believes that adoption of the proposals set forth in the Further Notice would serve the public interest in a number of important respects. First, removing the listing of internal cells from FCC authorizations would be entirely consistent with a decision to permit cellular licensees to make changes to their facilities and add transmitters within the contours of authorized stations without prior FCC approval or notification. Given the substantial build-out of cellular systems nationwide, there is no ongoing regulatory purpose for filing information concerning minor modifications or additions of cell sites entirely within a system's CGSA boundary. As the Commission acknowledged

^{2/}

Notice of Proposed Rulemaking, 7 FCC Rcd 3658, 3660-1, 3694-5 (1992) (the "Notice").

in the Notice, the rules requiring the filing of such information are unnecessary and outdated, and there is therefore no need for the Commission's staff to continue to maintain records and issue authorizations for internal sites.

Second, Vanguard agrees that eliminating the listing of internal cell sites would reduce the administrative and processing cost of issuing cellular authorizations. Under the current procedures, the frequent updating of information on internal cells, and the constant issuance and reissuance of FCC authorizations, is a burdensome and costly endeavor for the Commission and licensees alike. To illustrate the problem, the Further Notice mentioned that a large cellular carrier with over 200 cell sites must update system information frequently, with each change resulting in the issuance of a new authorization that may exceed 80 pages in length. Even more modest cellular operations would also benefit from adoption of the Commission's proposal. As the operator of 22 cellular systems with approximately 145 cell sites, Vanguard would welcome a simplified process that eliminates the need constantly to update system information, reduces the number of pages in cellular authorizations, and lessens the cost of regulatory compliance overall. The Commission's proposal would also reduce costs the FCC itself incurs for maintaining unnecessary records and issuing authorizations for interior cells. The financial resources and personnel devoted to maintaining such records could be better utilized in more productive regulatory endeavors.

Third, the burdens associated with maintaining records and issuing authorizations for internal cells will only increase over time as the cellular industry

grows through ever-increasing subscriber penetration, offers new features and enhanced services, and incorporates new technical solutions for serving the public. For example, the use of microcells to address special or unique service needs is becoming more prevalent, especially in larger systems. As wireless technology develops and market opportunities expand, there will be an increasing need for system enhancement through microcells located entirely within the contours of existing stations. The cellular industry is moving rapidly toward the extensive use of microcells to address service needs, and Vanguard foresees that literally hundreds of microcells will be incorporated routinely in MSA and RSA markets in the not too distant future. Unless the Commission eliminates the licensing of interior cell sites, such market-driven developments will only add unnecessary and unwarranted administrative pressures on the Commission and cellular licensees. Indeed, given the cellular industry's current and planned use of microcells, the Commission's continued licensing of interior cell sites would create an administrative nightmare for cellular licensees and the Commission alike.

Finally, while the Commission has proposed eliminating licensing for interior cells, it plans to maintain accurate, current information regarding cell sites that constitute a system's CGSA boundary. To facilitate this new licensing scheme, the Further Notice proposes to require all cellular licensees to submit specific information for each of their external cell sites. Vanguard supports the Commission's proposal as a reasonable and necessary first-step for implementing a simpler, more efficient licensing system.

As for the issuance of a Public Notice announcing the filing dates for receipt of this external cell site information, Vanguard urges the Commission to stagger the filing intervals over a sufficient period of time so that licensees which operate a large number of systems, like Vanguard, will have adequate notice and sufficient time to prepare the required filings. Developing an accurate data base regarding the location and the operating and technical parameters of exterior sites for systems nationwide is an important undertaking. For this reason, Vanguard urges the Commission to adopt a timetable for filing this information that will permit licensees to respond in a careful and orderly way.

D. System Information Updates

The Commission proposes to modify the rule governing the updated information that cellular licensees are required to submit before the end of the system filing period. Section 22.925 of the rules requires licensees to file maps and updated system information 60 days before the end of the five year fill-in period. This information includes a full-scale map, a reduced map, and a current frequency utilization chart. Based on the staff's experience with the current requirements, the Commission is proposing to modify the information that licensees must submit pursuant to this rule in the following respects:

First, consistent with the proposal to modify the map scale discussed above, the Further Notice proposes to revise the scale of the full-size maps to a scale of 1:500,000. This modification of Rule 22.925 is appropriate because it conforms the map requirements of the "System Information Update" rule to the proposed

requirements for the filing of cellular maps generally. Accordingly, Vanguard supports the proposed change.

Second, the Further Notice proposes to require that all maps submitted pursuant to Rule 22.925 show only the exterior cells and their respective service area boundaries that make up the CGSA. This proposal should also be adopted because it will conform Rule 22.925 to the Commission's other rule changes for eliminating the licensing of interior cells.

Third, the Commission proposes to require licensees to include an exhibit providing the coordinates for each exterior cell site and information currently required in the MOB 3 Table of FCC Form 401. This, too, is an appropriate change that will align the requirements of the System Information Update rule with related Commission proposals for streamlining cellular licensing.

Fourth, the Commission proposes to eliminate the requirement that cellular licensees submit a frequency utilization plan or chart. Vanguard agrees that frequency utilization information is not particularly useful for either the Commission or the public. As a practical matter, keeping such information current is an administrative burden for cellular licensees, and maintaining this information at the Commission is a needless task for the staff. Accordingly, eliminating the filing of frequency utilization information is an appropriate measure to streamline the regulatory process and reduce unnecessary paperwork.

Finally, the Commission proposes to require licensees to label information filed pursuant to Rule 22.925 with the number of the relevant market,

i.e., all System Information Update maps should bear the number of the cellular market involved. Vanguard agrees that this form of standard labelling will help to organize the licensing process and will ensure that the maps are associated with the correct file. Vanguard suggests, however, that licensees operating systems in adjacent markets on a combined basis should be permitted to submit one map reflecting the CGSA boundary of the combined system. Licensees in this circumstance would be relieved from the requirement of filing separate maps showing the exterior cells for each individual system. For example, Vanguard operates adjacent MSA systems in Charleston and Huntington, West Virginia, on a combined basis. Having the flexibility in this situation to file a single map that depicts the exterior cells for the combined system would streamline the licensing process further and would conform the Commission's records to actual marketplace conditions. Of course, licensees operating combined systems could be required to submit two or more copies of their combined map, with appropriate labelling information, so that a copy of the map could be directed to the correct file for each market.

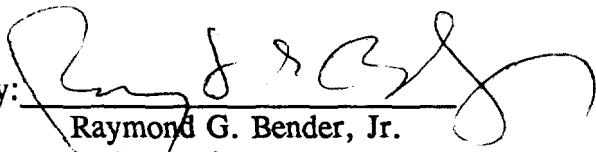
CONCLUSION

Streamlining cellular licensing procedures and eliminating unnecessary information collection requirements are appropriate objectives for the Commission to pursue. The Part 22 rule revisions proposed in the Further Notice reflect a number of important measures that will repeal outdated regulatory requirements and reduce the paperwork which cellular licensees and the Commission's staff must handle. For

these reasons, Vanguard supports the proposed Part 22 rule revisions as they affect cellular service.

Respectfully submitted,

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June 20, 1994

CERTIFICATE OF SERVICE

I, Deborah E. Buhner, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 20th day of June, 1994, I have had hand delivered the foregoing "COMMENTS" to the following:

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